



DELTA PATENTS

Training for Patent Professionals

**MAIN-EXAM
QUESTIONS
FOR PAPER D**

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D

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Introduction and acknowledgement

This document comprises an update to the Study Guide and Questions and Answers as used in our legal Main Exam Courses in 2021-2022, and “D-book” (edition June 2021, EQE 2022):

- Publications in OJ EPO after the Book was printed (OJ July 2021 – 31 October 2021);
- Publications in PCT Newsletter after the Book was printed (PCT NL June 2021 – 31 October 2021);
- Updates and corrections to the questions and answers;
- Answers to referrals G 4/19 (double patenting) and G 1/21 (oral proceedings by videoconference);
- Notices on the EQE website

We thank all who provided any comments and all candidates who participated in our legal training courses, as well as those that gave feedback on our material via email, for useful feedback. Any further comments are highly appreciated. The latest version of this document is available on our website.

Also refer to our compilations of key parts of the EQE syllabus as in force on 31 October 2021 for EQE 2022, on <https://www.deltapatents.com/course-links.html>:

- [EQE 2022 references - EQE](#)
- [EQE 2022 references - EPC \(compilation legal texts\)](#)
- [EQE 2022 references - EPC \(GL EPO\)](#)
- [EQE 2022 references - EPO and PCT \(compilation legal texts\)](#)
- [EQE 2022 references - EPO and PCT \(GL PCT-EPO\)](#)
- [EQE 2022 references - PCT \(WIPO\)](#)

Our EQE blogs provide further information as well as a platform for comments, discussion and tips. Please feel invited to contribute!:

- [DeltaPatents EQE Blog](#)
- [DeltaPatents Paper D Blog](#)

Our Model Solutions (including updated papers) for D 2014 – D 2021 are available from our webshop. They allow to practice up-to-date versions of the last seven EQE D papers:

- [DeltaPatents Webshop - Analysis and Model Solutions for Paper D](#)

Roel van Woudenberg,
November 2021/ January 2022

1. EQE 2022 preparation courses

DeltaPatents organizes further training sessions for candidates preparing for Pre-Exam 2022 and for the Main Exam 2022 in the period from April 2021 until February 2022.

Please check our website for course details, further announcements and enrolment:

<http://www.deltapatents.com/eqe.html>

<http://www.deltapatents.com/eqe-main-exam-paper-d.html>

<http://www.deltapatents.com/registration--cancellation.html>

or contact us via email at:

training@deltapatents.com

2. Other EQE 2022 material: model solutions, reference books

Model Solutions

DeltaPatents provides **updated exam papers and model solutions** for all main exam papers. Please order in our [webshop](#).

Reference books

The DeltaPatents [webshop](#) also provides:

- **“References to the European Patent Convention”** by Jelle Hoekstra
- **“The Cross-Referenced Patent Cooperation Treaty”** by Cees Mulder, and
- **“Topic-Related Index to the EPC and PCT”** by Cees Mulder.



3. Update of Study Guide

Training Material and Sources – Recommended Reference Books (English)

Add:

- C. Mulder: “Topic-Related Index to the EPC and PCT” from www.helze.com or webshop.deltapatents.com

Training Material and Sources – Law + Regulations

4. Fee payments to the EPO from www.epo.org

“Arrangements for deposit accounts” [OJ Suppl 4/2019, per 1 October 2019; superseding OJ Suppl 5/2017]

Add:

- ADA/AAD2019 have been amended by OJ 2020, A77 per 1 July 2020 (Ex officio revocation of all pending automatic debit orders upon closure of a deposit account; additional search fee under R.40bis jo R.20.5bis PCT in the event of correction of an erroneous filing), by OJ 2021, A26 per 1 April 2021 (introduction of Online Filing 2.0) and by OJ 2021, A60 per 11 September 21 (introduction of Central Fee Payment).

EQE

1. EQE Regulation

Add:

- On EQE website:
 - “Information on the schedule for the EQE 2022 examination papers”
 - “Information on planned mock examinations”
- Check EQE website for updates! <https://www.epo.org/learning/eqe.html>

C1, Case Law – Headnotes / Reasons

- G 1/19 has been published in OJ 2021, A77 (September issue)

H8, Case Law – Headnotes / Reasons

Add:

- G4/19 “Double patenting by same applicant – 3 situations: 2 EP filed on same date, divisional-parent, internal priority (legitimate interest due to filing date setting patent term)” - Decision dd 22 June 2021:
 1. A European patent application can be refused under Art.97(2) and 125 EPC if it claims the same subject-matter as a European patent which has been granted to the same applicant and does not form part of the state of the art pursuant to Article 54(2) and (3) EPC.
 - 2.1 The application can be refused on that legal basis, irrespective of whether it
 - a) was filed on the same date as, or
 - b) is an earlier application or a divisional application (Article 76(1) EPC) in respect of, or
 - c) claims the same priority (Article 88 EPC) asthe European patent application leading to the European patent already granted.

H10 & H11, Case Law – Headnotes / Reasons

Add to *Oral proceedings by ViCo*:

- Order G 1/21 (order issued 16.07.2021; full, reasoned decision not yet available): “During a general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises, the conduct of oral proceedings before the boards of appeal in the form of a videoconference is compatible with the EPC even if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.” (Not covered by the order: in case of absence of a period of general emergency; examination or opposition proceedings before the EPO's departments of first instance)

H11, Law + Regulations:

Add to OJ 2020, A89:

- OJ 2020, A67 “Notice from the EPO dated 19 August 2021 concerning the termination of the pilot project on notification by email during examination proceedings under the decision of the Vice-President Legal and International Affairs (DG 5) of the EPO dated 23 July 2020.”: pilot project on notification by email not extended (in view of enhanced mailbox functionality) and will therefore come to an end on 31 August 2021.

H14, Law + Regulations:

Add:

- OJ 2021, A60 “Decision of the President dd 13 July 2021 concerning revision of the ADA”: introduction of Central fee Payment in ADA5.1.1, ADA 5.1.2 and ADA 5.3 per 11/9/21
- OJ 2021, A61 “Notice from the EPO dd 13 July 2021 concerning Central Fee Payment” supersedes OJ 2020, A130 per 11/9/21

Add to OJ 2020, A130:

- superseded by OJ 2021, A61 per 11/9/21

Add to OJ 2020, A62:

- superseded by OJ 2021, A73 “Notice from the EPO dd 23 September 2021 concerning the payment of fees by credit card” per 1/10/21: introduction of a daily limit for credit card payments in item 4 (EUR 10 000.00 per credit card and per user account)

L1, Law + Regulations:

Replace OJ 2020, A91 by:

- OJ 2021, A58 “Reduction of fees – revised lists of states” – supersedes OJ 2020, A91 per 1/7/21

Add:

- PCT NL Jul-Aug 2021, Practical Advice “Requesting incorporation by reference of correct drawings in the case of erroneously-filed drawings”

L3, Law + Regulations:

Add:

- OJ 2021, A60 “Decision of the President dd 13 July 2021 concerning revision of the ADA”: introduction of Central fee Payment in ADA5.1.1, ADA 5.1.2 and ADA 5.3 per 11/9/21

4. Calendars

Notice from the Examination Board dd 19 November 2021

The Examination Board published a Notice which supersedes the notice from the Examination Board dated 18 July 2013 concerning the use of calendars (i.e., supersedes the Notice shown in the Book).

For EQE 2022, no calendars will be provided with the examination papers anymore!!!

You will need to take the EPO closure dates from the OJ (accessible via External Resources in Wiseflow, and you will need to bring a list showing on which dates Saturdays and Sundays fall in 2020, 2021 and 2022.



Europäisches
Patentamt
European
Patent Office
Office européen
des brevets

19 November 2021

Notice from the Examination Board for the European qualifying examination (EQE)

Calendars are a necessary tool for calculating time limits, in particular where Rule 134(1) EPC, first sentence, applies. According to this provision, time limits expiring on a day on which at least one EPO filing office is not open for receipt of documents (closing day) are extended until the first day thereafter on which all the filing offices are open for receipt of documents and on which ordinary mail is delivered.

As of the 2022 examination, the practice concerning calendars will change: calendars will no longer be provided to candidates as part of the examination papers for the pre-examination and Paper D.

A notice listing the dates on which the EPO filing offices are closed is published each year in the Official Journal. For the purposes of applying Rule 134(1), first sentence, EPC and Rule 80.5 PCT, candidates should refer to the relevant notice on EPO closing days. They will be able to access the EPO website for this during the exam.

Candidates are allowed to use their own calendar to identify dates falling on a Saturday or Sunday.

This notice supersedes the notice from the Examination Board dated 18 July 2013 concerning the use of calendars.

For the Examination Board
The Chairman

Nicolas Favre

Candidates may refer to our blog post <http://eqe-deltapatents.blogspot.com/2021/11/calendars-for-eqe-2022.html>

Calendars in the Wiseflow Mocks

Instead of a calendar, Wiseflow provides a pdf with information about the calendars indicating:

Important notice for candidates: Use of calendars

For the EQE 2022 the basis for calculating time limits are the days on which the EPO filing offices are closed as published in the Official Journal. Candidates are encouraged to have the closing days of 2020, 2021 and 2022 at hand during the examination. No calendars will be provided with the examination papers.

For the Mock exams that are based in former EQE papers, Wiseflow refers to the Compendium.

Wichtiger Hinweis für Bewerber: Verwendung von Kalendern

Für die EEP 2022 sind die im Amtsblatt veröffentlichten Tage, an denen die Annahmestellen des EPA geschlossen sind, Grundlage zur Berechnung von Fristen. Den Bewerbern wird empfohlen, die geschlossenen Tage der Jahre 2020, 2021 und 2022 während der Prüfung zur Hand zu haben. Es werden keine Kalender mit den Prüfungsaufgaben zur Verfügung gestellt.

Für diese Probeproofung verweisen wir Sie auf das Compendium, in dem Sie die entsprechenden Kalender finden.

Vorprüfung: https://www.epo.org/learning/eqe/compendium/preexamination_de.html
Aufgabe D: https://www.epo.org/learning/eqe/compendium/D_de.html

Important notice for candidates: Use of calendars

For the EQE 2022 the basis for calculating time limits are the days on which the EPO filing offices are closed as published in the Official Journal. Candidates are encouraged to have the closing days of 2020, 2021 and 2022 at hand during the examination. No calendars will be provided with the examination papers.

For this mock examination, please be referred to the Compendium where you can find the respective calendars.

Pre-examination: <https://www.epo.org/learning/eqe/compendium/preexamination.html>
Paper D: <https://www.epo.org/learning/eqe/compendium/D.html>

Avis important pour les candidats : Utilisation des calendriers

Pour l'EEP 2022, le calcul des délais est basé sur les jours de fermeture des bureaux de réception de l'OEB tels que publiés au Journal Officiel. Il est recommandé aux candidats d'avoir à portée de main les jours de fermeture des années 2020, 2021 et 2022 pendant l'examen. Aucun calendrier ne sera fourni avec les épreuves d'examen.

Pour cet examen blanc, veuillez-vous référer au Compendium où vous trouverez les calendriers respectifs.

Examen préliminaire : https://www.epo.org/learning/eqe/compendium/preexamination_fr.html
Epreuve D : https://www.epo.org/learning/eqe/compendium/D_fr.html



5. Update of Main-Exam Questions

C7-20

Correct:

USCO is the only applicant for EP-1.

Into:

USCO is the only applicant for PCT-1.

D-06

Amend the first sentence to read:

Two European patent applications were filed in December 2021 by the same applicant:.

H14-14

Correct:

“On 12 June 2020, the deposit account showed a balance of € 950”

into:

“On 10 June 2021, the deposit account showed a balance of € 950”

6. Update of Answers to Main-Exam Questions

C-27

Expand and correct the second part of the answer to a) to read:

- But, a (partial) priority right was transferred from Y to Z – T 969/14
- So that Z has a partial priority right from EP1 for the M+A part
- So that the M+A claim of EP-Z has the filing date of EP1 as its effective date

- Y has a partial priority right from for the conceptual remainder, and only for that, i.e., for “M, where M is not M+A”
 - So the remainder in EP-Y benefits from partial priority from EP1
 - And the remainder-part of EP-Y has the filing date of EP1 as its effective date, i.e., the same as EP-Z’s M+A
 - So that the remainder of EP-Y has is not considered when assessing novelty of the claim of EP-Z
- The conceptual M+A part in EP-Y does not benefit from priority
 - The conceptual M+A part of EP-Y has the filing date of EP-Y as its effective date, i.e., after that of EP-Z’s M+A
 - So that the conceptual M+A part of EP-Y has is not considered when assessing novelty of the claim of EP-Z

- So neither part of EP-Y is prior art to EP-Z’s claim to M+A
- As there is also no other prior art, the claim is novel.

- The rights to M+A part were transferred, so Z is entitled to the grant of EP-Z with M+A.

D-06 (amended Rule 19 EPC)

Amend the third bullet of the answer in respect of EP-A to:

- Care should be taken with country and place of residence of the inventor of inventor - R.19(1) applies to rectification - R.21(1), so that correct country and place of residence of the inventor must be mentioned
 - Note: since 1/4/2021, it is no longer required to give the full contact address of inventor – OJ 2021, A3 & A12

H3-32, H9-23, H9-35, H12-04, H14-04, H14-13, H14-14, h14-15, H14-24, L3-39 (ADA/AAD)

Add/Amend to Comments:

- *ADA2019 superseded ADA2017 per 1/10/2019 – OJ Suppl 4/2019; ADA2019 was amended by OJ 2020, A77; OJ 2021, A26 (Online Filing 2.0 per 1/4/21) and OJ 2021, A60 (Central Fee Payment per 11/9/21)*

H3-33

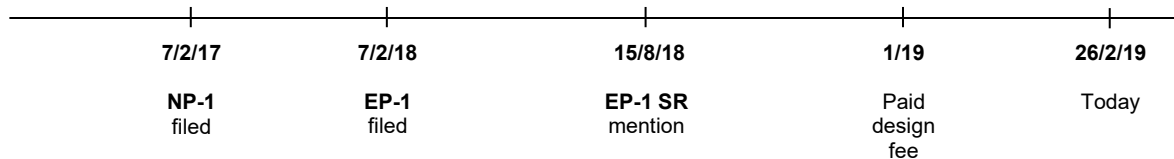
Add to beginning of the Answer:

- The language of proceedings of the earlier application EP-PCT1 is German as:
 - International application PCT-1 was filed in German – Art.14(3)- and German is an EPO official language – Art.14(1), and
 - the filing of the English translation on EP entry has no effect, as the language of proceedings cannot be changed on EP entry – G 4/08.



H4-12

The figure accidentally overlapped the first lines of the answer. Please correct the figure and the first lines to:



Situation as-is

- o Separate invention is not unitary – Art.82
- o so “A” has to file a divisional – Art.76, R.36 - claiming the separate invention – G2/92

H7-04

Add as first two bullets of Advice:

- o At any time up to the moment the decision to grant is handed over to the EPO's internal postal service for transmittal to the applicant – G 12/91 -, the examining division may resume the examination procedure – R.71a(2); GL (2021) C-V, 6.1
- o So amendments and arguments can still be filed

H7-13

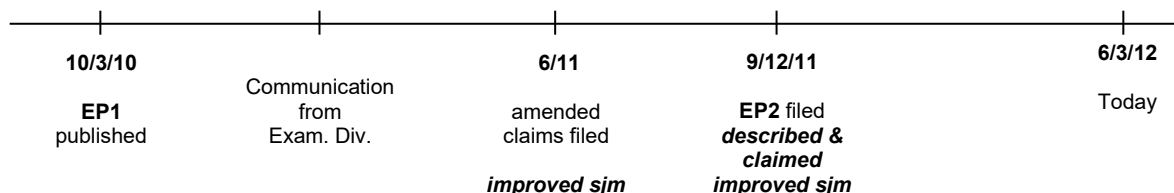
Please correct the “Amendment to (c)” and subsequent bullet to:

- o Amendment to (c):
 - o The restrictions of the concentration range and of the type of nonionic surfactant respectively to "3% to 20% by weight of the total composition" and "C8-C22 aliphatic alcohols with 1 to 25 moles of ethylene oxide" correspond to the most preferred concentration range in claim 4 as filed, and a preferred (not the most preferred) type of nonionic surfactant defined in claim 5 as filed
 - o These amendments are thus based on the combination of claims 1, 4 and 5 as filed with additional restrictions based on selections from lists of converging alternatives, which constitute a limitation of the scope of protection and not an arbitrary selection from lists because the examples point to these specific selections – T 1621/16, r.1.8.3

H7-15

The figure accidentally overlapped the first lines of the answer. Please correct the figure and the first lines to:

- o EPC



- o EP1 publication – Art.93 - on 10/3/10 does not include improved subject matter (imp. sjm)
- o But from 10/3/10, EP1 files may be inspected – A.128(4)
- o and all files are publicly available

H10-26

Add a reference to R.99 to the case law in:

- Debit order filed with an application number cannot be a substitute for an explicit and unequivocal statement expressing the definite intention to contest an appealable decision – **R.99(1)(b) & (c)**; J 767/18, r.6; J 19/90; J 16/94, r.4; T 778/00, r.2.2.

H10-32

The figure accidentally overlapped the first lines of the answer. Please correct the figure and the first lines to:

EPC

	7/1/20	13/1/20	24/1/20	29/1/20	17/3/20
	Date of decision	Decision received	Date of correction	Correction received	Today

Possible Solutions

- 1. Appeal based on decision of 7/1/20 – Art.108
- 2. Appeal based on correction of decision

H14-04, H14-14, H14-15; L3-33 (credit card payments)

Replace references to OJ 2020, A62 by OJ 2021, A73:

- OJ 2021, A73 “Notice from the EPO dd 23 September 2021 concerning the payment of fees by credit card” superseded OJ 2020, A62 per 1/10/21: introduction of a daily limit for credit card payments in item 4 (EUR 10 000.00 per credit card and per user account.).

L3-37

In the Answer, replace the reference to OJ 1993, 504 by OJ 1993, 540